

MAYOR DOYLE IMPOSES SENTENCE!

Extreme Provocation Modifies Punishment in Horse-Whipping Cases.

The Court Lashes Samuel A. Kennedy For Designing to Extort Money From Bertram G. Work,

And Censures the Defendants For Taking the Law Into Their Own Hands---No Imprisonment Sentence Imposed

THE SENTENCES.

B. G. Work, \$150 and costs.
G. C. Kohler, \$100 and costs.
S. H. Kohler, \$50 and costs.

"To stand committed to Summit County jail until fines and costs are paid." The costs amount to \$8 in each case.

The fines were paid immediately following the sentences.

Mayor W. B. Doyle took up the Kennedy horse-whipping cases at the regular session of Police court Saturday morning. He was desirous of disposing of the cases without further delay. The defendants last night agreed to appear in court.

At 8:55 this morning Judge J. A. Kohler appeared, followed by S. H. Kohler and B. G. Work.

Geo. C. Kohler, who has been out of the city two weeks was expected on every train, but his non-arrival did not stop proceedings, attorneys waiving his right to be present.

There was a crowd in the court room and about the City building. The defendants were accompanied by their attorneys, and received their sentences very calmly, though their interest was deeper than they cared to show.

FULL TEXT

Of Mayor Doyle's Decision in the Cases.

In passing sentence, Mayor Doyle summed up the case as follows:

"The defendants in these cases are charged with assault and battery. They were arrested upon affidavit made by Officer John Goodenberger, alleging the commission of this offense upon one Samuel A. Kennedy. Upon arraignment in this court June 25, 1901, they severally entered a plea of guilty to the charge in the affidavit. The injured party was unable to be present on that date, and this court deemed it expedient to continue the case until he should be able to

appear and be heard. On July 13, all the interested parties appeared in court, except the defendant, G. C. Kohler, who was represented by counsel, and who filed a waiver of his right to be present during the trial and judgment of his case. On motion of the defendants, consented to by the State, the court heard testimony in mitigation of the sentence. Rev. Stat., Sec. 7320. No objection has been made to the jurisdiction of this court, and it is sufficient to say that this court is of opinion that it has final jurisdiction in these cases.

"It appeared from the evidence that Samuel A. Kennedy had published in an obscure and small paper, called the Amusement Record, of which he is the editor and proprietor, a statement concerning the private and personal relations of two Akron families, which the defendants understood to reflect upon themselves. The published statement was a sensational and scandalous presentation of unfounded rumors which malignant persons had set afloat in this city. In print the idle gossip of the streets appeared in the tawdry and garish style of the dime novel. No self-respecting journal would have considered a publication such as this for one minute. It was not news in any sense of the term. It was not matter of public interest. It related solely to the private and personal affairs of the family—matters as sacred as any upon earth.

"The false rumors had obtained a very wide circulation, and all who had heard them, and read the article,

knew to whom it referred. On the evening of June 24, while gathered at the home of Judge Kohler, all the defendants were shown the article. Having ascertained that Kennedy was at home, they started within an hour to find him. Reading the article made them exceedingly angry. All the defendants testified to being angry to a point of fury.

"It may be said here, once for all, that all the evidence produced by the defense is entirely uncontradicted or disputed by the State.

"Kennedy was called out upon his porch and beaten and struck by S. H. Kohler and B. G. Work with the short, light end of buggy whips, and their fists. G. C. Kohler and one Goldsmith stood by without taking any active part. The affair lasted not much more than one minute. The defendants drove to Police headquarters and gave bond for their appearance in this court. Nothing can justify the commission of a crime, but there may be circumstances entering into it which may mitigate the punishment.

"Return to a consideration of the article published in the Amusement Record: Nothing will justify the publication of matters such as these even if founded on truth, but in this case they were not true, and the evidence shows that Kennedy knew they were false. The slandered persons had already suffered keenly and deeply. The idle gossip had made wounds in many families other than the two directly interested, which were slow to heal. The evidence shows a careful design on the part of Kennedy to trade upon these wounds; to make money for himself out of the sorrows and sufferings of others; to make the wrongs suffered by them redound to his own emolument, and to rejoice in their misfortune because it resulted in his good fortune. It is difficult to speak of these things and preserve the judicial temperament, to repress the feelings of the man, and to allow full play for the cool, calm deliberation of the judge. If the assault may be characterized as cowardly and brutal, what shall be said of this act of Kennedy which induced it. The prosecution has asked the court

to consider whether there was an attempt at blackmail. The evidence shows that there was; that Kennedy had set in motion all the treachery to produce that felony, and that it was no fault of his that the attempt failed. If Fred Work had called at Kennedy's office in response to the request of the mythical person 'Harris,' there is no doubt in the mind of the court that blackmail would have resulted. Kennedy should be profoundly thankful that the Works failed to take the bait he had so carefully laid.

"The so-called 'long article' which Kennedy set up in type but withheld from his paper cannot be considered as giving provocation to his assailants because they did not learn of its existence at that time, but it is very important evidence to establish the fact of this attempt at blackmail.

"Why was it composed? The uncontradicted testimony of the witness Roan, supported by that of Fred Work, shows that it was to be used for the extortion of money by threats to publish. It justifies the belief, in the minds of the defendants, formed before the assault, that an attempt was being made to blackmail them. It is proper to consider this question now whether this attempt at blackmail constitutes lawful provocation for the assault and battery.

"Provocation is 'such conduct or actions on the part of one person toward another as tend to arouse rage, resentment or fury in the later against the former and thereby cause him to do some illegal act against or in relation to the person offering the provocation.'—(Black's Law Dictionary, 960.)

"In the opinion of the court the acts constituting the felony of blackmail tend precisely to all these consequences. It is not unreasonable to suppose that a person would be aroused to rage, resentment or fury by an attempt to extort money from him by threats and accusations of crime punishable by law, or of immoral conduct, which, if true, would tend to degrade and disgrace such persons, or in any way to subject him to the ridicule or contempt of society. (R. S., Sec. 6830). The attempt to do this, followed by the publication of the slanderous article in the Amusement Record, constitutes a complete provocation for what followed; they aroused the fury and the resentment and the rage they were well adapted to do. In the words of counsel in argument, 'Kennedy brought the assault upon himself; he is responsible for the consequences of his act.' In this case the consequences were such as in the experience

of mankind may be expected to follow such an act.

"The testimony showed that the assault was made in a spirit of rage and fury. It was done in but resentment of wrongs inflicted. It was clearly provoked. In passing sentence this provocation must be considered. The court or jury that fixes the punishment may listen to the aggravating and mitigating facts and place it where justice and sound policy for this particular instance dictate, yet neither more nor less nor otherwise than the law has limited and defined."

"The entire transaction in which a crime was committed may embrace more unkindness than the indictment charges; or there may be other circumstances of aggravation on the one hand, or of mitigation on the other. Therefore, if the law has given the court a discretion as to the punishment in pronouncing sentence, it will look into any evidence proper to influence a judicious magistrate to make it heavier or lighter, yet not to exceed for what of crime is within the allegation and the verdict."

"After full consideration of the provocation and careful weighing of the mitigating circumstances in these cases, it is not open to the judicious magistrate to impose the heavier penalty. It must be remembered that the defendants have already suffered keenly. It cannot be said that mental suffering is a whit less poignant than physical. As far as pain is concerned these defendants would doubtless be glad to change places with the assaulted party.

"In passing sentence this court has not been unmindful of the fact that these defendants acted in a riotous, lawless manner. They defied the laws when they determined to redress their injuries for themselves. They live in a highly organized community. Its residents have ready access to courts of nearly all grades. From the Summit county bar may be selected lawyers of the very highest degree of professional skill. Our people are imbued with the loftiest respect for law and legal processes. They have inexorably determined that order must be maintained here at any cost. Acting upon these high ideals, men take the disputes that arise between them into the courts for settlement. Crimes are swiftly and adequately punished. There has been no failure of justice in our midst. Living among men accustomed and trained to resort to law and not to force for redress of injuries, these defendants agreed among themselves to take the law into their own hands. They decided

to resort to violence, in defiance of the spirit and tradition of the community.

"These men should have been examples in our midst of high and right living, of calmness and restraint under provocation, and of abiding and constant reverence for establishing law and fear of its sanctity. They should have regarded the fame of the splendid city in which they live—a city already sufficiently disgraced by other illegal outbursts of rage and violence; where extraordinary exertions had been put forth to impress upon a very small disturbing and riotous element the lessons of law and order; where citizens have determined that personal safety and personal earnings will be protected without regard to the cost.

"The evidence shows that two men, aided and abetted by two others, fell upon one. The assault was a sudden and complete surprise. Kennedy was decoyed from his house and given no chance to prepare to defend himself. In view of these facts it was cowardly and contravened all the commonly accepted ideas of fair play.

"The man assaulted was in his own home when the attack was made. He was surrounded by his own family. He was in the one place in the world where he supposed himself to be safest. When a mob is commanded to disperse they are told to go to their homes. In the time of disturbance it is the proper place for peaceful and orderly citizens. He was ready to protect his wife and children; he was at their side, where he belonged, and where he ought to have been. He expected the State to protect him there and that expectation was reasonable.

"It was claimed by these defendants that for the injury suffered by them they had no redress in law. That question cannot be determined here. Even were it true it could not exonerate them or justify their attempt at personal redress. There are cases which the law cannot reach where one must suffer in silence. This would not be the first nor the sole case of damnum absque injuria.

"In the case of the State of Ohio against S. H. Kohler one fact appears which tends most strongly to palliate the crime he committed. In that case it was his innocent and helpless wife who had been deeply wronged and who was suffering from the injuries which Kennedy had inflicted. He had tried to destroy her reputation. He crystallized in print the foulest and basest rumors concerning her. Her honor as a woman had been attacked and the act of her husband arose not so much from a desire to punish an injury against himself as to vindicate his wife's honor. He had his wife's injuries in his mind when he assaulted Kennedy.

He was standing up for his wife; he was defending her fair name and he was punishing one who had cowardly assailed it. In this fact the court finds a circumstance that almost completely extenuates his guilt. "None of these three defendants has ever before been under arrest or held to answer for the commission of crime. They occupy a very high position in the business life of this city. They have invested money here which gives employment to large numbers of our citizens. They are public-spirited, and have the welfare of our city much at heart. The fact that they are men of wealth should not influence judgment in their favor, neither should it militate against them. They are not being punished for their wealth or their unpopularity. They should be punished for what they did, and not what they are.

"In view of the fact that this is their first offense; that it was done in heat of blood which blinded them to consideration of time and place; that there was extreme provocation for what they did, and that many extenuating circumstances enter into these cases, this court is of opinion that the ends of justice will be met if S. H. Kohler shall pay a fine of \$50 and costs, G. C. Kohler \$100 and costs, and B. G. Work a fine of \$150 and costs. It is therefore the sentence of this court that the defendant S. H. Kohler pay the fine of \$50 and the costs of prosecution in his case, that the defendant G. C. Kohler pay the fine of \$100 and costs, and B. G. Work the fine of \$150 and the costs of prosecution in his case, and that they stand committed to the jail of Summit county until the amount of said fines and costs shall be paid."

CLOSED INCIDENT.

The Sentences Have Settled the Horse-Whipping Affair.

Except that suit for damages may be begun, the sentences imposed by Mayor Doyle Saturday morning makes of the Kennedy horse-whipping affair a closed incident so far as the courts are concerned. There has been some talk of proceedings against Sam A. Kennedy, but there will probably be none.

Mayor Doyle settled this point, no doubt, in his decision when he said: "The prosecution has asked the court to consider whether there was an attempt at blackmail. The evidence shows that there was; that Kennedy had set in motion all the treachery to produce that felony, and that it was no fault of his that the attempt failed."

The request of Prosecutor Benner, to which the Mayor referred, was made in his argument at the conclusion of the hearing, when he said:

"These cases are unusual. A report was circulated which was directed against the honor of a woman. These men, according to their story, saw this article and then took the law into their own hands in heat and without deliberation. If the court believes that there was any attempt at blackmail, he should take that into consideration."

Prosecutor Benner had referred especially to the testimony of Edward Roan, pressman at Kennedy's office, the truth of whose testimony showing that an especially slanderous article had originally been prepared by Kennedy, and that blackmail was attempted, has not been denied.

Late & Locals

Two way-side wanderers called at Poor Director Kendall's office Friday morning. One wanted transportation to Pittsburg, the other wanted to go to the County Infirmary, but was told to move on, because he came from another part of the country. The Pittsburg wanderer was told to get out of town.

The Knights of Columbus are holding their annual outing at Put-in-Bay this week. Quite a number of people have gone from Akron, some just for the day, and others for the whole week. The outing will close Sunday.

New Restaurant.

Mr. E. A. Hille, of Massillon, will open a first-class restaurant in the Walsh block, in the rooms which were occupied by C. H. Martin, the piano dealer. Mr. Hille has been engaged in the hotel business in Massillon.